

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Cody	Team: Team # 6	CCRB Case #: 200808381	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/11/2008 7:10 PM	Location of Incident: East 71st Street and Third Avenue	Precinct: 19	18 Mo. SOL 12/11/2009	EO SOL 12/11/2009	
Date/Time CV Reported Wed, 06/11/2008 8:07 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 06/11/2008 8:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Charles Zwilling	20752	935452	019 PCT
2. Officers			019 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christoph Paul	23414	935470	HWY DST
2. POM Eric Behrendt	06002	926558	ESS 02
3. SGT Richard Wall	02401	923338	019 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Charles Zwilling	Force: PO Charles Zwilling used physical force against § 87(2)(b)	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C.POM Charles Zwilling	Abuse: Charles Zwilling issued a summons to § 87(2)(b)	

Synopsis

On June 11, 2008, § 87(2)(b) filed this complaint with the CCRB via the call processing system on behalf of § 87(2)(b). § 87(2)(b) did not know § 87(2)(b) at the time of this incident. On June 11, 2008, at approximately 7:10pm, in the vicinity of East 71st Street and 3rd Avenue in Manhattan, § 87(2)(b) approached Officer Charles Zwilling, of the 19th Precinct, and asked him why the street was sealed off. Officer Zwilling allegedly responded by pushing § 87(2)(b) a number of times (Allegation A). § 87(2)(b) was then handcuffed and placed against a window of Grace's Market, a store nearby. § 87(2)(b) was later pushed into the backseat of a patrol vehicle by a number of officers (Allegation B). § 87(2)(b) was transported to the precinct and issued two disorderly conduct summons and a traffic ticket by Officer Zwilling (Allegation C).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b)

On June 11, 2008, § 87(2)(b) filed this complaint with the CCRB via the call processing system (Enc. 5A-B). Her initial complaint was substantially consistent with her formal testimony. On March 25, 2009, § 87(2)(b) was contacted via phone and asked to clarify a number of aspects of her statements (Enc. 9A). Any information she added to her statement will be noted in the testimony below.

On June 24, 2008, § 87(2)(b) was interviewed at the CCRB (Enc. 8A-D). § 87(2)(b) stated that she had no relation to § 87(2)(b) and did not know his name. § 87(2)(b) indicated that on June 11, 2008, half of the block between East 71st Street to East 72nd Street on 3rd Avenue (on the east side of the street) was blocked off to pedestrians with police tape. The area had been closed because a tree branch closer to East 72nd Street had partially broken off and was hanging over the sidewalk. As a result, pedestrians were being redirected into the street. During § 87(2)(b)'s March 25, 2009, phone statement, she indicated that no officer was ordering pedestrians around the tape; she said it was obvious that the pedestrians had to walk around the tape into the street. At approximately 7:10pm, she was near East 71st Street and mentioned in her phone statement that she and a number of people were walking in a single file line in the street to get around the police tape.

An individual, later identified via investigation as § 87(2)(b) a white male, gray haired, heavyset, wearing a blue suit, in his late 60's or early 70s, was about two people ahead of § 87(2)(b) on the street. She observed § 87(2)(b) approach Officer Zwilling, shield number 20752, who was standing nearby. § 87(2)(b) was close enough to look at the officer's name and shield number. During § 87(2)(b)'s phone statement, she indicated that § 87(2)(b) never passed a police line to speak to Officer Zwilling. § 87(2)(b) was three or four feet away from § 87(2)(b) when he stopped to speak with Officer Zwilling who was in front of Grace's Marketplace on the street. § 87(2)(b) asked Officer Zwilling in a normal tone, "What's going on here?" § 87(2)(b) did not say this in a challenging way, he only asked. Officer Zwilling screamed angrily, "What do you think is going on here?" § 87(2)(b) replied, "I have a right to know." Without any provocation, Officer Zwilling grabbed § 87(2)(b) on his upper body, spun him around, and slammed him against the side of a parked car causing § 87(2)(b) to hit his torso against the vehicle. § 87(2)(b) never made any motions towards Officer Zwilling. Officer Zwilling told him to place his hands behind his back.

§ 87(2)(b) observed at least two other officers who saw § 87(2)(b) being grabbed by Officer Zwilling. They were both uniformed white males. One of them was a heavy set blonde young male. § 87(2)(b) insisted he had a right to know and told Officer Zwilling to let him go. Officer Zwilling told him that he would be arrested for resisting an officer. Officer Zwilling then began moving § 87(2)(b) over towards the sidewalk. § 87(2)(b) began yelling, "I want a witness. I want a witness." but nobody said or did anything. At some point, § 87(2)(b) told Officer Zwilling that he was going to make a citizen's arrest,

which § 87(2)(b) said she did not mention when she initially filed this complaint. § 87(2)(b) said it appeared § 87(2)(b) was handcuffed at that point but she was not sure. § 87(2)(b) remained calm during the incident but Officer Zwilling “looked like he was going to explode with rage.” At no point did § 87(2)(b) raise his voice or make any aggressive gestures. § 87(2)(b) believed that Officer Zwilling must have been angry about something beforehand because his response to § 87(2)(b) was so inappropriate. She wrote it down and left the area. When § 87(2)(b) left the scene § 87(2)(b) was still being detained next to Grace’s Marketplace.

§ 87(2)(b)

On October 2, 2008, § 87(2)(b) was interviewed at the CCRB (Enc. 6A-F). He is a § 87(2)(b). He stated that on June 11, 2008, at approximately 7:00pm, he was in the vicinity of East 71st Street and 3rd Avenue in Manhattan. § 87(2)(b) was wearing a Bobby Jones powder blue jacket with either a white or pink shirt, a pink or blue tie and white pants. § 87(2)(b) was carrying a New York Times with him and was planning on eating dinner at a café. § 87(2)(b) was initially on the west side of 3rd Avenue but then walked over to the east side of the street. At that time, he observed a large number of vehicles and buses backed up south of East 71st Street and part of the traffic appeared to be pushed towards the west side of 3rd Avenue.

§ 87(2)(b) approached his usual supermarket, Grace’s Marketplace, located on the northeast corner of East 71st Street and 3rd Avenue. § 87(2)(b) observed a large crowd outside the supermarket. § 87(2)(b) said there is a woman who sells jewelry in the area who was near a van with New Jersey license plates. In front of her vehicle was a mini-van. Between both vehicles was an officer later identified as Officer Charles Zwilling.

§ 87(2)(b) approached Officer Zwilling and asked him, “What is going on?” Officer Zwilling said there was a tree that fell down near East 72nd Street. § 87(2)(b) told him the tree had fallen at 9:30pm the previous night and he had heard it snap. § 87(2)(b) told Officer Zwilling that was “old news.” § 87(2)(b) described his tone as calm. Officer Zwilling did not give him a response but suddenly pushed § 87(2)(b) in his shoulder area. Officer Zwilling did not give him any verbal warnings before pushing him. He was not aware whether Officer Zwilling was using one hand or two hands. § 87(2)(b) and Officer Zwilling did not have much of a conversation and § 87(2)(b) could not understand why Officer Zwilling pushed him. § 87(2)(b) noticed a violent anger in Officer Zwilling’s eyes. § 87(2)(b) responded to the push by telling Officer Zwilling he could have him arrested for doing what he was doing. Officer Zwilling responded by pushing § 87(2)(b) again closer to the sidewalk. Officer Zwilling then came behind § 87(2)(b) and pushed his back until he was on the sidewalk. Officer Zwilling continued to push § 87(2)(b) until he was against Grace’s Market. § 87(2)(b) did not recall being pushed into a vehicle but said he was initially pushed into the direction of a car. § 87(2)(b) never attempted to walk away.

§ 87(2)(b) said the area between the two vehicles where he initially began speaking to Officer Zwilling was not taped off with any kind of police tape. However, § 87(2)(b) said when he was pushed on the sidewalk by Officer Zwilling he observed that a portion of East 71st Street sidewalk area was roped off. § 87(2)(b) realized that nobody was permitted on the sidewalk once he was pushed on to it.

Once § 87(2)(b) was against Grace’s Market, Officer Zwilling said, “Put your hands behind your back.” § 87(2)(b) put his hands behind his back and handcuffs were applied. § 87(2)(b) then told Officer Zwilling, “Stop bullying me.” Officer Zwilling asked for ID once he was in handcuffs but § 87(2)(b) could not reach it. Officer Zwilling never asked him for ID prior to that point. During that time, a crowd was standing around the area. In addition to the female street vendor, the manager of Grace’s Market, identified via investigation as § 87(2)(b) § 87(2)(b) was standing in the doorway of his store. A woman from § 87(2)(b)’s building happened to be present while § 87(2)(b) was in handcuffs. § 87(2)(b) described her as a short lady, a little round, looks Israeli and has a slight Israeli accent, approximately 50 years old with brown hair, who remains unidentified. § 87(2)(b) said this woman did not see the beginning of this incident. While § 87(2)(b) stood in handcuffs an older woman, with brownish hair and a brownish shirt, identified as § 87(2)(b) approached § 87(2)(b) and quietly told him, “Don’t worry, I have his name and number,” referring to Officer Zwilling. As § 87(2)(b) turned around, he saw a male who was taking cell phone pictures of § 87(2)(b) standing on the street. § 87(2)(b) saw the name of a company on the side of the truck, which said Acme National Cash Register from Hackensack, New Jersey. § 87(2)(b) believed this individual was the driver of the truck.

§ 87(2)(b) stood in front of Grace's Market for a while when Officer Zwilling along with two plainclothes officers, PO2 § 87(2)(b) (could not identify him) and PO3, a white male, reddish-blond hair, beard, in a green t-shirt, in his 40's, approached and pushed § 87(2)(b) into the back of their vehicle. § 87(2)(b) never tried to resist them but told them he had a back problem. § 87(2)(b) said he is a large guy and they could not push him into the vehicle. PO4, large male and possibly in uniform § 87(2)(b) (could not identify him) came from other side of the back door and pulled § 87(2)(b) into the vehicle by his shoulders.

Two female officers drove § 87(2)(b) to the precinct. Once at the precinct, Officer Zwilling looked through § 87(2)(b)'s wallet and wanted to know what he did for a living. § 87(2)(b) told Officer Zwilling, "If this is how you treat an innocent bystander, I can certainly envisage how you treat people whom you have a suspicion." Officer Zwilling did not respond. § 87(2)(b) told Officer Zwilling he is a physician. § 87(2)(b) indicated he wanted to speak to someone and wanted to know his rights. § 87(2)(b) was brought into an adjoining room and placed in a cell. Officer Zwilling later came to the cell and told § 87(2)(b) he was going to let him go since he did not have a record.

Officer Zwilling took § 87(2)(b) outside and said, "I never bullied you," and told § 87(2)(b) "It's all a misunderstanding." Officer Zwilling then gave him three pink tickets. One summons was for walking in the face of oncoming traffic, one for disorderly conduct, obstructing traffic and another for disorderly conduct, hazardous conditions. During § 87(2)(b)'s interview he disputed the legitimacy of each summons and said that he was only talking to Officer Zwilling between two parked cars during this incident.

§ 87(2)(b) went home and his wrists were swollen from the handcuffs. An orthopedist gave him an X-ray, Motrin and recommended an occupational therapist that later provided him treatment for his hand. § 87(2)(b) later went to the supermarket and received a phone number for the man who was driving the ACME NCR truck. § 87(2)(b) was told the driver's name was § 87(2)(b).

Results of Investigation

Witness: § 87(2)(b)

On February 11, 2009, § 87(2)(b) § 87(2)(b) was interviewed at Grace's Marketplace located at 1237 3rd Avenue in Manhattan (Enc. 7A-C). § 87(2)(b) is the § 87(2)(b) at the store. § 87(2)(b) stated that on June 11, 2008, at approximately 7:15pm, he was working when one of his employees informed him there were police outside. § 87(2)(b) walked outside and saw an individual who he recognized as a regular customer at his store, § 87(2)(b) in handcuffs. § 87(2)(b) observed an officer standing nearby, in plainclothes, telling § 87(2)(b) to stay where he was. § 87(2)(b) was calm at that point but kept asking the officer why he was under arrest. The officer was alone and was not responding to § 87(2)(b)'s questions as to why he was under arrest.

§ 87(2)(b)'s back was to the grocery store and he stood there for approximately two to three minutes while officers told § 87(2)(b) that the street was closed off due to a tree falling down the block. They told § 87(2)(b) he could open his side door to allow customers to enter. § 87(2)(b) reentered his store and opened the side door. Approximately 20 minutes later, § 87(2)(b) heard screaming outside his store. He walked outside and saw three officers, the first officer, another officer, a white male, and a third officer he could not describe, pushing § 87(2)(b) inside a marked police vehicle. § 87(2)(b) was screaming that he could not fit inside. § 87(2)(b) said § 87(2)(b) is a very large individual and it looked like he could not fit. The officers kept pushing him inside the car. One officer pushed § 87(2)(b)'s head down so it would not hit the top of the vehicle. It took approximately three to four minutes to fit § 87(2)(b) inside the car. When they finished placing him inside, § 87(2)(b) saw an officer had a slight cut to his lip that was bleeding. § 87(2)(b) did not know how this officer received this cut to his lip.

§ 87(2)(b) said there is a French woman who comes to his store who is in her 50's or 60's who complained about the way the officers handled § 87(2)(b). § 87(2)(b) did not know this woman's name. § 87(2)(b) said there is a worker for ACME payroll systems named § 87(2)(b) who § 87(2)(b) indicated saw this incident.

Attempts to Interview Additional Witness

The undersigned investigator attempted to interview § 87(2)(b). Upon calling ACME National Cash Register, § 87(2)(b)'s cell phone number was provided. On February 13, 2009, § 87(2)(b) provided the following unverified phone statement (Enc. 23A-G). On June 11, 2009, § 87(2)(b) was outside Grace's Market where the sidewalk was closed off by police because a tree branch had broken on the block. § 87(2)(b)'s vehicle was in

park outside the store and he was repairing a computer inside Grace's Market that day. While § 87(2)(b) was outside, he observed an individual, identified via investigation as § 87(2)(b) interacting with a police officer, identified via investigation as Officer Zwilling. Officer Zwilling was telling § 87(2)(b) not to go through the area but § 87(2)(b) wanted to go through. Officer § 87(2)(b) was telling people to go to the other door on the side of Grace's Market. § 87(2)(b) told § 87(2)(b) not to go on the sidewalk. § 87(2)(b) then entered the store and when he came out he saw § 87(2)(b) in handcuffs. § 87(2)(b) did not see anything else regarding this incident.

On March 20, 2009, the undersigned investigator attempted to interview § 87(2)(b) in-person at ACME NCR located in Hackensack, New Jersey (Enc. 22A). However, upon arrival, § 87(2)(b) stated that he would not provide a recorded statement and would not sign anything in relation to this investigation. § 87(2)(b) would not provide his last name either. As a result, § 87(2)(b) never provided formal testimony. § 87(2)(b) mentioned off the record that he saw § 87(2)(b) cross the police line on the sidewalk and argue with the officer.

On February 11, 2009, a canvass was performed in the area of East 71st Street and 3rd Avenue for any street vendors who may have witnessed the incident. However, there were no street vendors working in the area at that time.

Identification of Officers Interviewed

Officer Zwilling was interviewed because he was the officer who issued § 87(2)(b) three summonses. Officer Paul was interviewed because he was Officer Zwilling's partner. Sgt. Wall was interviewed because he was identified by Officer Paul as the supervisor who arrived on scene.

Subject Officer: PO Charles Zwilling

Officer Charles Zwilling, of the 19th Precinct, was interviewed at the CCRB on October 9, 2008 (Enc. 10A-F). On June 11, 2008, he worked in uniform from 3:05pm to 11:35pm. He was initially assigned to bicycle patrol #6 but was reassigned to East 71st Street and Third Avenue to deal with the partially fallen tree. There were no officers from the precinct on the scene besides Officer Zwilling and his partner Officer Paul. Officer Zwilling's memo-book (Enc. 10A-F) had the following entries, "1850: ESU on scene for tree removal; 1905 – disorderly male front of 1237 3rd Avenue male white walked around police line I set up blocking pedestrian traffic on east sidewalk of 3rd Avenue E71 – E72. I was announcing to people that sidewalk was closed due to tree removal. Def. walked into right (east) most vehicle lane of 3rd Avenue, around police line and parked cars attempting to get to closed off sidewalk. Several other pedestrians were attempting same move so I was yelling for the whole group to cross the street, the sidewalk was closed. Male white demanded to know why and refused to move from traffic lane, causing traffic disruption and putting both of us in danger. I told male specifically to get out of street two more times, then escorted male, grabbing his left arm w/ my left hand, and guided him to sidewalk with my right hand on his back. Male yelled 'don't push me you bully' and 'I'll arrest you.' Once on sidewalk I asked male for ID to write him a summons – he turned and attempted to walk away. I followed defendant along sidewalk, stopped him by standing in front of him and told him he was under arrest. I ordered him to put his hands behind his back, and he refused, so I had to forcefully cuff him up against a shelf/display on the sidewalk. Sgt Wall on scene; 1915: 1 under; 1925- 84 @ 19 PCT; 1950 – warrant check neg; 2025 – perp out, § 87(2)(b)." Officer Zwilling's three summonses are also enclosed.

On the incident date, a large tree had partially collapsed onto a light pole on East 72nd Street. When ESU arrived to remove the debris, Officer Zwilling and his partner, Officer Paul, blocked the sidewalk off with tape between East 71st Street and East 72nd Street on 3rd Avenue's east side. There were also some cones on the street that were moving traffic towards the west side of the street on 3rd Avenue. Officer Paul was stationed at the corner of East 72nd Street while Officer Zwilling was closer to East 71st Street. A number of people tried to bypass the sidewalk by walking into the street, but Officer Zwilling told people they had to cross to the west side of Third Avenue and use the sidewalk there instead of walking in the street. Most people were ignoring the officer's orders. Officer Zwilling was initially behind the tape but when he began ordering people out into the street Officer Zwilling came to the other side of the tape.

§ 87(2)(b) approached the police tape at East 71st Street and 3rd Avenue and then proceeded slightly west into 3rd Avenue headed north. Officer Zwilling did not remember if § 87(2)(b) approached him with questions about why the street was roped off or what was going on, nor did he recall who spoke to whom first. Officer Zwilling continued to give commands to pedestrians. § 87(2)(b) along with others,

ignored those commands and walked around the sidewalk cordon into a lane of traffic. Officer Zwilling told § 87(2)(b) to go to the other side of the street, but § 87(2)(b) refused. § 87(2)(b) was in the second lane of traffic at that point, which was an open lane of traffic. Officer Zwilling walked into the street in pursuit and escorted § 87(2)(b) back onto the sidewalk by grabbing his left arm and guiding him there. § 87(2)(b) was refusing to move so Officer Zwilling had to put his right hand behind his back and pushed him on to the sidewalk. Officer Zwilling said that he believed § 87(2)(b) wanted to go to Grace's Marketplace.

Officer Zwilling stated that he approached § 87(2)(b) as opposed to most people because most people were crossing the street in response to his orders. § 87(2)(b) loudly said, "I'm going to arrest you." Officer Zwilling decided to issue him summonses at that point and asked § 87(2)(b) for ID. § 87(2)(b) called Officer Zwilling a bully and proceeded to walk away, going south on the sidewalk. Officer Zwilling walked in front of him and said, "You're not free to go." He asked for his ID again; § 87(2)(b) refused. Officer Zwilling told him to place his arms behind his back, which he also refused. Officer Zwilling said they struggled a little bit and he was trying to get his radio. § 87(2)(b) grabbed a shelf along the wall of an adjacent store, requiring Officer Zwilling to forcefully pull § 87(2)(b)'s arms behind in order to handcuff him. § 87(2)(b) was screaming during this encounter and a crowd began to gather around the pair.

Officer Zwilling stated that § 87(2)(b)'s obstruction of vehicular traffic constituted disorderly conduct. Additionally, the fact that Officer Zwilling had to deal with § 87(2)(b) while other people were walking in the street created a hazardous condition. Officer Zwilling stated it bothered him that he had to "deal with" § 87(2)(b). Officer Zwilling decided to take "pity" on § 87(2)(b) because he was crying and claiming he was a doctor, so he did not charge him with obstruction of governmental administration or resisting arrest. § 87(2)(b) was taken to the precinct, issued several summonses, and released.

Witness Officer: PO Christopher Paul

Officer Christopher Paul, of the 19th Precinct, was interviewed on February 25, 2009 (Enc. 13A-B). He is a § 87(2)(b). On June 11, 2008, Officer Paul worked in uniform from 4:00pm until 12:00pm patrolling on a bicycle with Officer Zwilling. Officer Paul did not have any entries in his memo-book regarding this incident (Enc. 14A-B).

Officer Paul said that the night before this incident there was a storm with high winds. A tree blew over that night and knocked over a telephone pole. The following day, officers taped off the area around the tree while they waited for ESU to come and cut it down. Pedestrians were walking past it. As a result, Officer Paul and Officer Zwilling decided it would be a good idea to shut off the whole block since people were walking too close. They used yellow police tape to seal off the area.

Officer Paul and Officer Zwilling sealed off the street from the East 72nd and 3rd Avenue southeast corner and the northeast corner of East 71st and 3rd Avenue. Officer Paul then stationed himself on East 72nd and 3rd Avenue and Officer Zwilling on East 71st and 3rd Avenue. The police tape blocked off the sidewalk and the first lane of traffic near the sidewalk. They were tying tape to garbage cans, light poles and whatever else they could find. No supervisors instructed them to do so; they just took it upon themselves.

They were instructing pedestrians to walk north or south on 3rd Avenue. Officer Paul did not know exactly how he became aware of this incident but observed his partner having an interaction with a pedestrian. Officer Paul did not recall if Officer Zwilling was with other officers or if he was alone. Officer Paul walked to East 71st Street and observed an individual identified via investigation as § 87(2)(b) not wanting to cross the street. § 87(2)(b) was likely positioned on the sidewalk in front of Grace's Market. Officer Paul said he was sure there were other civilians in the area likely located on the sidewalk because it is a very busy intersection. Officer Paul said there were only civilians up to the police line, not past it. They were letting people go in and out of Grace's Market in the area, allowing them into a side door and another door that was around the corner. Officer Paul could not approximate how many civilians were in the area.

Officer Paul did not recall if § 87(2)(b) was already in handcuffs or if he was being put in handcuffs. § 87(2)(b) was disorderly, screaming, ranting and raving. Officer Paul could not recall what § 87(2)(b) was screaming. Officer Paul said that he could not recall if § 87(2)(b) was in handcuffs but once he was placed in handcuffs § 87(2)(b) attempted to get out of the handcuffs by squirming, fidgeting and flailing. Officer Paul was asked how he was flailing if he was in handcuffs and he said, "I don't know, as much as you can move your arms while they're behind your back." Officer Paul did not know if any officers were restraining § 87(2)(b). Officer Paul could not recall if he spoke with § 87(2)(b) and did not have any physical interaction with him. Officer Paul did not recall what Officer Zwilling said to him but was sure he was speaking to him. Officer Zwilling indicated later to Officer Paul that § 87(2)(b) wanted to walk on the sidewalk. Officer Zwilling told him the sidewalk was closed and he had to go up the street.

When § 87(2)(b) wanted to walk into the street, Officer Zwilling told him it was not a good idea because of traffic and then told § 87(2)(b) to use the crosswalk. § 87(2)(b) did not comply and that was when Officer Zwilling became involved.

Officer Paul was present at the scene for a few minutes before § 87(2)(b) was placed into the vehicle. Sgt. Richard Wall, a plainclothes officer, arrived on scene. Sgt. Wall instructed § 87(2)(b) he was going to be placed in the vehicle. § 87(2)(b) began squirming as the officers began trying to place him in an unmarked vehicle. Officer Paul did not know who placed § 87(2)(b) inside the vehicle but Officer Paul did not help put him in the vehicle. Officer Paul said the officers had to push him in because § 87(2)(b) was trying to move away. Officer Paul said it was possible § 87(2)(b) was not fitting in the vehicle but Officer Paul could not remember. Officer Paul recalled § 87(2)(b) being overweight but did not recall him being extremely tall. Officer Paul did not know if § 87(2)(b) ever accused Officer Zwilling of bullying him. Officer Paul did not know if § 87(2)(b) was given summonses or what he was charged with.

Witness Officer: Sergeant Richard Wall

Sergeant Richard Wall, of the 19th Precinct, was interviewed at the CCRB on March 31, 2009 (Enc. 15A-B). He is § 87(2)(b). On June 11, 2008, he was working in plainclothes from 2:50pm until 11:47pm doing Anti-Crime patrol in an unmarked vehicle. Sgt. Wall was supervising Officer John Sheedy, Officer Mark Morales, Officer Henry Zayas and Officer Timothy Gavin. He did not have any memo-book entries regarding this incident.

Sgt. Wall initially did not have any independent recollection of this incident. When he was shown the ESU report for this incident, he then recalled what happened. Sgt. Wall believed he arrived on scene because Officer Zwilling called for a sergeant. ESU was cutting down a tree branch in the area and operating heavy machinery. Sgt. Wall did not know which officers from his Anti-Crime team responded with him. Sgt. Wall initially said that when he first arrived § 87(2)(b) was not in handcuffs and was not following Officer Zwilling's orders to get off the sidewalk. § 87(2)(b) wanted to walk on the street and also went under police tape at the scene. Sgt. Wall was not sure if § 87(2)(b) was already in handcuffs. Sgt. Wall indicated that the police tape was blocking the sidewalk and some of the street. Sgt. Wall did not know where § 87(2)(b) was when he first arrived on scene, whether he was on the street or sidewalk.

Sgt. Wall indicated that he was on scene for approximately two to three minutes before § 87(2)(b) was escorted into a police vehicle. § 87(2)(b) was screaming while Sgt. Wall was on scene but Sgt. Wall could not recall exactly what he was screaming. Sgt. Wall did not speak with § 87(2)(b) but Officer Zwilling told Sgt. Wall that he was not following his orders to stay off the sidewalk. Sgt. Wall said a crowd gathered but he could not say how many people were in the crowd since people kept moving on. Sgt. Wall indicated the area had heavy foot traffic at the time.

Sgt. Wall called for a marked vehicle to respond to the scene but did not know which officers arrived. Sgt. Wall and Officer Zwilling walked § 87(2)(b) to the patrol vehicle which was approximately seven feet away. Sgt. Wall and Officer Zwilling opened the door of the patrol car and told § 87(2)(b) to get inside. § 87(2)(b) refused to enter the vehicle. Sgt. Wall and Officer Zwilling then had to forcibly place § 87(2)(b) into the vehicle. They grabbed § 87(2)(b)'s shoulders and pushed him down into the car. At first Sgt. Wall could not recall whether § 87(2)(b) landed on his chest or back or in a seated position but eventually said § 87(2)(b) was placed into the car in a seated position. Sgt. Wall said they did not throw § 87(2)(b) into the vehicle because he was an elderly male, approximately 50 years old. Sgt. § 87(2)(b) did not recall whether § 87(2)(b) was yelling he could not fit inside. Sgt. Wall described § 87(2)(b) as a large male, somewhat chubby.

Once § 87(2)(b) was inside the police vehicle, Sgt. Wall told Officer Zwilling that if § 87(2)(b) began acting like a gentleman and was eligible to be released with a summons after he was checked for warrants, § 87(2)(b) could be released with a disorderly conduct summons. Sgt. Wall did not feel that § 87(2)(b)'s violation was serious enough for him to be processed. Sgt. Wall indicated § 87(2)(b) was disorderly based on his yelling and his refusal to follow an officer's orders.

Police Documentation

The Sprint report for this incident stated that at 7:15pm, there was an arrest made. At 7:20pm, the 19th Precinct sergeant indicated that there was one male en route to the 19th Precinct (Enc. 16A-B).

The Emergency Service Report (Enc. 19A) for this incident stated, "Crew used chainsaw to remove most of the tree fallen on sidewalk. Crew could not reach piece caught on light pole. Crew advised precinct to notify parks department to respond with cherry picker." The stop-and-frisk log is enclosed with

no entry for this incident (Enc. 18A). The command log indicates that § 87(2)(b) was in normal condition (Enc. 17A-E). The 19th Precinct roll call is enclosed (Enc. 20A-O).

§ 87(2)(a) 160.50

Civil Suit

On August 19, 2008, § 87(2)(b) filed a Notice of Claim regarding this incident. There was no specified sum of money requested from the City of New York (Enc. 21A-J).

CCRB History

Neither § 87(2)(b) nor § 87(2)(b) have any previous CCRB complaints on record (Enc. 3A-4A). Officer Zwilling has no substantiated cases on record (Enc. 2A).

Conclusions and Recommendations

Officer Identification

Since § 87(2)(b) identified Officer Zwilling by name as the officer who pushed him, allegation A will be pleaded against him. Since a number of officers pushed § 87(2)(b) into their patrol vehicle and since the investigation found that use of force to be exonerable, which will be discussed below, allegation B will be pleaded against “officers.” Since Officer Zwilling was the officer who issued all three summonses for § 87(2)(b) allegation C will be pleaded against him.

Undisputed Facts

It is undisputed that a tree branch fell on East 71st Street causing part of the street between East 71st Street and East 72nd Street to be taped off on 3rd Avenue. On June 6, 2008, § 87(2)(b) was walking to Grace’s Market and spoke with Officer Zwilling. Officer Zwilling handcuffed § 87(2)(b). Officers then placed § 87(2)(b) inside a police vehicle for transport to the 19th Precinct. § 87(2)(b) was released with two disorderly conduct summonses and one traffic ticket.

Disputed Facts

It is in dispute whether § 87(2)(b) and Officer Zwilling had any conversation concerning the police presence in the area prior to Officer Zwilling placing him in handcuffs. It is in dispute whether Officer Zwilling pushed § 87(2)(b)’s chest or whether § 87(2)(b) was ever pushed into a vehicle. It is in dispute whether § 87(2)(b) was screaming during this incident. It is in dispute whether § 87(2)(b) was acting in a disorderly manner or obstructing pedestrian or vehicular traffic.

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation A) Force: PO Charles Zwilling used physical force against § 87(2)(b)

As addressed in the *Assessment of Evidence*, it is unclear exactly how § 87(2)(b) came to be stopped and how this incident began based on the discrepancies between § 87(2)(b) and Officer Zwilling's testimony. § 87(2)(g)
§ 87(2)(k)
§ 87(2)(k)
§ 87(2)(k)
§ 87(2)(k)

Allegation C) Abuse of Authority: PO Charles Zwilling issued summonses to § 87(2)(b)

Officer Zwilling issued three summonses to § 87(2)(b) one for disorderly conduct, subsection five, another for disorderly conduct subsection seven. The third was a traffic ticket for violation 4-04 subsection E2, for walking into the path of vehicular traffic. What must be determined is whether Officer Zwilling had grounds to issue these summonses. The disorderly conduct statute states, “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, subsection five, he obstructs vehicular or pedestrian traffic and subsection seven, he creates a hazardous or physically offensive condition by any act which serves no legitimate purpose” (Enc. 1A).

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their patrol vehicle that he began yelling, saying that he could not fit inside. § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: